

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 20915 of 2007(M)

OS.161/2006 of PRL.S.C.,THALASSERY

PETITIONER:

**C.H.RAJU, S/O.JANAKI AMMA, R/AT.
"RAVI MANDIRAM", PAZHASSI AMSOM,
MATTANNUR DESOM, MATTANNUR P.O.,
THALASSERY, KANNUR DISTRICT.**

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS:

**CHORAPPAN CHANDRAN, S/O.KOMAPPAN, R/AT,
AZHIKODE AMSOM, KACHERIPPARA DESOM, KANNUR,
REP. BY POWER OF ATTORNEY HOLDER, T.BALARAMAN,
S/O.T.RAMAN, R/AT. SARASWATHI SADANAM, PAZHASSI
AMSOM, MATTANNUR DESOM, THALASSERY, KANNUR
DISTRICT.**

BY ADV.SRI.R.SURENDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C) NO.20915/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PLAINT IN OS. NO.161/06 FILED BY THE RESPONDENT BEFORE THE SUB COURT, THALASSERY DT. 8.8.06.

EXT.P2:- COPY OF THE WRITTEN STATEMENT IN OS. 161/06 DT.NOVEMBER, 2006 FILED BY THE PETITIONER BEFORE THE SUB COURT , THALASSERY.

EXT.P3:- COPY OF THE JUDGMENT DT. 21.12.06 IN FAO NO.307/06 OF THIS HONOURABLE COURT.

EXT.P4:- COPY OF THE COMMISSION REPORT DT. 9.1.07 FILED BY THE ADVOCATE COMMISSIONER BEFORE THE PRINCIPAL SUB COURT, THALASSERY.

**EXT.P5:- COPY OF THE PLAN ATTACHED TO EXT.P4 REPORT DT. 9.1.07.
EXT.P6:- COPY OF THE ORDER DT. 22.2.07 IN IA. NO.192/07 IN OS. NO.161/06 OF THE SUB COURT, THALASSERY.**

EXT.P7:- COPY OF THE ORDER DT. 27.6.07 IN IA. NO.1030/07 IN IA. NO.192/07 IN IS. NO.,161/06 OF THE SUB COURT, THALASSERY.

EXT.P8:- COPY OF THE SALE DEED DT. 23.9.83 BY WHICH THE POWER OF ATTORNEY HOLDER OF THE RESPONDENT PURCHASED PROPERTY NEAR THE PLAINT PROPERTY.

EXT.P9:- COPY OF THE SALE DEED DT. 24.9.83 BY WHICH THE PREDECESSOR OF THE PETITIONER PURCHASED THE PLAINT PROPERTY.

E.XT.P10:- COPY OF THE DOCUMENT DT.4.2.05 BY WHICH POWER OF ATTORNEY HOLDER OF THE RESPONDENT SOLD THE EXT.P8 PROPERTY.

/TRUE COPY/

P.A. TO JUDGE

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M.N. KRISHNAN, J.

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W.P.C. NO. 20915 OF 2007

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Dated this the 10th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside Exts.P6 and P7 orders. The brief facts necessary for the disposal of the writ petition are as follows:

2. The suit is one for specific performance of the contract. The defendant had agreed to sell, as per an agreement, 77 cents of property to the plaintiff for a consideration of Rs.66,000/- per cent, i.e., 40 cents in Sy.No.120/04 and 37 cents in Sy.No.120/1C. The plaintiff is prepared to purchase the property but he is not satisfied with the extent shown in the agreement and therefore he wants the property to be measured and he is prepared to pay the amount which is actually available and in the possession of the defendant. The matter reached this Court against the interim order and this Court directed the Commissioner to measure the property and there was a direction to the plaintiff to deposit the balance consideration before the Court

below within six weeks from the date when the Court fixes the exact extent of land available for sale. I am informed that the plaintiff has deposited about Rs.38 lakhs before the Court below. The Commissioner inspected the property with the assistance of a Taluk Surveyor and submitted a plan and report and the report is marked as Ext.P4 in the writ petition and the plan as Ext.P5. A perusal of the plan gives an idea about the dispute which requires resolution.

3. According to the plaintiff the property that is available with the defendant is plots A and C marked in the sketch having an extent of 14.55 cents in Re.Sy.No.120/1C and 46.80 cents in Re.Sy.No.120/4. But according to the defendants the property which he is entitled to and is in possession are plots A,B,C and D, ie., 73.73 cents out of which 22.58 cents comprised in Re.Sy.No.120/1C and 51.15 cents in Re.Sy. No.120/4. With due respect to the Commissioner it is to be stated that the Commissioner has not attempted to locate the property with respect to the title deeds of the parties. The whole dispute centers round

regarding the fixation of the southern boundary. According to the plaintiff 'N O J I H' in Ext.P5 plan is the southern boundary whereas according to the defendant it is 'M L K I H' which is the southern boundary. The reason given by the Commissioner for fixing 'N O J I H' as southern boundary is on account of the existence of remnants of some stones which according to the power of attorney holder of the plaintiff, had planted at the time of previous transactions. Now, the dispute is of a civil nature and when there are crystal clear evidence evidencing the title of the parties in order to resolve the dispute it is a settled principle that the properties have to be identified and demarcated with respect to the title deeds of the parties. It is also settled that when there is some discrepancy with respect to survey numbers, extent etc. the boundary shown in the documents can be looked into and it may have preference unless it is otherwise stated. So the basic factum of measuring and identifying the property with respect to the title deeds is a sine qua non for properly fixing the property.

4. Now there are four documents which has to be looked into. The title deeds of the defendant are 890/83 and 1364/83. The adjoining properties' title deeds are 1361/83 and 937/I/05, i.e., the person who purchased the property under 1361/83 transferred his right in favour of Biju by virtue of 937/I/05. Therefore, with relevance to the four documents one has to locate the property for a proper disposal of the matter. Since the Commissioner has not adverted to the same I find that the Commissioner's report lacks credibility and therefore it has to be remitted back to the same Commissioner to do the work with respect to the title deeds of the parties and therefore the orders under challenge are set aside and the Court below is directed to remit the Commissioner's plan and report to the same Commissioner with the assistance of a Taluk Surveyor to demarcate the property with reference to the document Nos.890 and 1361/83 and also to find out the property which is covered by document NoS.1361/83 and 937/I/05. While identifying the property the Commissioner can take note of

the survey numbers, boundaries, description of the properties etc. and arrive at a decision. The Commissioner is also free to fix or locate the property in accordance with these documents and further he can also report about the present existing boundaries if available on the plot. Thereafter, the parties may be permitted to file objections, if any, to the Commissioner's report and it may be heard and disposed of in accordance with law. But visit of the property by the Commissioner with the assistance of the surveyor will take some time and therefore I am told that an amount of Rs.38 lakhs is deposited by the plaintiff is lying in the Court deposit without fetching any interest for him. I am also told that he had borrowed the money for the purpose of this deposit. So, he should not be unnecessarily penalized. Therefore, the Court below is directed to deposit the amount which is deposited by the plaintiff in a nationalized bank fetching maximum interest for a reasonable period, in the name of the plaintiff and intimation should be given to the Bank that the amount shall not be withdrawn by the plaintiff

without intimation to the Court and the lien of the Court may be noted in the fixed deposit receipt. The Court below shall endeavour to get the Commissioner's plan and report at the earliest and try to dispose of the matter as expeditiously as possible. The Court may also inform the Taluk Surveyor about the direction of this Court for giving speedy assistance to the Commissioner for inspection of the property. The Commissioner may also fix which according to him is the available land in the possession of the defendant which is undisputed and that can be transferred.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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